

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

STATE OF ALASKA,)
)
Plaintiff,)
)
v.)
)
ANDREW J. DAYTON,)
)
Defendant.)
_____)

4FA-98-2438 CR

NOTICE TO THE COURT OF APPEALS AND ORDER TO PARTIES

This Court conducted a hearing on August 29, 2019 as directed by the Court of Appeals. In attendance at the hearing was District Attorney Hoffer, the prosecutor assigned to the matter, Assistant District Attorney Haines, Assistant Public Defender Anna Ambrose, and Public Defender Justin Racette. The undersigned's substantive involvement in the matter was limited to the change of plea and revocation hearing conducted on March 15, 2019 and the issues brought forth on remand.¹

FINDING ON REMAND

The Court of Appeals issued a remand order for further findings regarding why the trial court permitted the defendant's attorney to withdraw in the above-captioned case. Specifically, the Court of Appeals stated in its remand order:

¹ At the change of plea and revocation hearing on March 5, 2019, this Court provided APD Ambrose approximately twenty minutes to confer with the defendant in private, then conducted the advisements of rights, accepted the defendant's plea and admission, and entered an order revoking 245 days pursuant to a complete Rule 11 agreement between 4FA-98-2438 CR and 4FA-18-2411 CR. PD Racette, the defendant's primary attorney, was unable to attend the change of plea hearing due to a conflict of schedule. The defendant was represented by APD Ambrose at the change of plea hearing.

Because it is unclear-based on the pleadings filed by Mr. Dalton- why the trial court allowed Mr. Dayton's attorney to withdraw after the revocation of Mr. Dayton's probation, and because it appears that Mr. Dayton may still be entitled to the assistance of counsel at public expense in the current appellate proceedings, this Court must remand this case for further findings.

At the hearing on August 29, 2019, this Court inquired of all counsel involved in the underlying revocation proceedings, which were DA Hoffer, APD Ambrose, and PD Racette, regarding the issue of withdraw.² D.A. Hoffer had no information to provide and was unaware of any order regarding withdraw of counsel issuing. APD Ambrose advised she never requested, orally or in writing, to withdraw from representing the defendant at any time prior to the revocation hearing, during the revocation hearing, or after the revocation hearing, and no order such order of withdraw was issued at any time to the best of her knowledge. PD Racette advised he never requested, orally or in writing, to withdraw from representing the defendant prior to the revocation hearing or after the revocation hearing, and no order of withdraw was ever issued to the best of his knowledge. PD Racette advised that it is possible his office closed the defendant's file intra-office as the revocation hearing consisted of a complete and total Rule 11 agreement from which there were no appellate issues to be raised to the best of his knowledge, or that confusion may exist due to possible appeals raised in the past unrelated to the revocation hearing.

The undersigned reviewed the trial file, all pleadings filed therein, and all log notes related to all hearings. The trial file does not reflect a request to withdraw ever having been made, orally or in writing, at any time before, during, or after entry of the order imposing sentence on the petition to revoke probation. Nor was an order permitting withdraw of counsel otherwise issued otherwise.

² ADA Haines was not involved in the underlying proceedings.


The Court finds The Public Defenders Agency never requested to withdraw from representing the defendant at any time in the above-captioned matter regarding the petition to revoke probation and subsequent revocation hearing held on March 5, 2019. The Court finds no order of withdraw was ever granted, orally or in writing, allowing withdraw of public counsel issued at any time before, during, or after the revocation hearing on March 5, 2019 in case 4FA-98-2438 CR.

The first issue on remand was why the trial court permitted public counsel to withdraw. This Court concludes withdraw never occurred because it was never ordered, allowed, or requested in in 4FA-98-2438 CR regarding the revocation proceedings of March 5, 2019.

Further Order to Parties:

The parties, other than Mr. Hoffer, shall attend the representation hearing scheduled for September 10, 2019 at 1:15 p.m. regarding the continued representation issues set forth on the remand order. The Public Defenders Agency shall make arrangements for the defendant to participate telephonically.

DATED at Fairbanks, Alaska this 30th day of August, 2019.


Matthew C. Christian
District Court Judge,
Superior Court Judge Pro Tem

I certify that on 9/4/19 copies of this
form were sent to: DA, PD, COA
Clerk: DS